

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-050966

06/18/2010

HONORABLE MICHAEL R. MCVEY

CLERK OF THE COURT
R. Tomlinson
Deputy

HELVETICA SERVICING INC, et al.

DONNELLY A DYBUS

v.

KELLY R PASQUAN, et al.

KELLY R PASQUAN
10601 N MONTROSE WAY
SCOTTSDALE AZ 85254

VISHNU R JONNALAGADDA
DANIEL L KLOBERDANZ
THOMAS PURCELL LIDDY
BRANDON A NEWTON

RULING
MATTER(S) UNDER ADVISEMENT
ORAL ARGUMENT SET
LATER RULING

1:58 p.m. This is the time set for Oral Argument regarding Third-Party Defendant in Intervention Stephen and Pamela Pasquan's Rule 12(b)(6) Motion to Dismiss Ronald Gold's Complaint in Intervention, Plaintiff in Intervention Ronald L. Gold's Motion to Dismiss Helvetica Servicing Inc.'s Counterclaim, and Plaintiff Helvetica Servicing's Motion to Dismiss Plaintiffs in Intervention Ronald Gold's Complaint in Intervention. Present on behalf of Plaintiff Helvetica Servicing Inc. is counsel, Donnelly A. Dybus. Present on behalf of Intervenor, Ronald Gold, is counsel, Vishnu Jonnalagadda. Present on behalf of Third- Party Defendants Stephen and Pamela Pasquan and Joseph J. Giraudo is counsel, Daniel Kloberdanz.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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06/18/2010

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Argument is presented to the court.

The Court has considered Third-Party Defendant in Intervention Stephen and Pamela Pasquan's Rule 12(b)(6) Motion to Dismiss Ronald Gold's Complaint in Intervention, Mr. Gold's Response thereto, as well as the Reply filed by Stephen and Pamela Pasquan.

For the reasons set forth in both the Motion and the Reply,

IT IS ORDERED granting Third-Party Defendant in Intervention Stephen and Pamela Pasquan's Rule 12(b)(6) Motion to Dismiss Ronald Gold's Complaint in Intervention.

IT IS FURTHER ORDERED taking Plaintiff in Intervention Ronald L. Gold's Motion to Dismiss Helvetica Servicing Inc.'s Counterclaim, and Plaintiff Helvetica Servicing's Motion to Dismiss Plaintiffs in Intervention Ronald Gold's Complaint in Intervention under advisement.

IT IS FURTHER ORDERED vacating Oral Argument regarding Intervenor's Motion to Quash Joseph G. Giraudo's Notice of Deposition of Ronald L. Gold; and Request for Rule 26(c) Protective Order against all Discovery Requests from Daniel L. Kloberdanz, Esq, and Plaintiff in Intervention Ronald L. Gold's Motion for Leave to take Rule 30 Deposition of Daniel L. Kloberdanz as Material Fact Witness, previously set for July 9, 2010, and **resetting** same to be heard in conjunction with Oral Argument on Plaintiff/Defendant Helvetica's Motion to Quash and Declare Null and Void Sheriff's Redemption by Joseph J. Giraudo for **July 13, 2010 at 10:00 a.m.** (1 hour in total allotted, with 20 minutes allotted for argument regarding Plaintiff/Defendant Helvetica's Motion to Quash and Declare Null and Void Sheriff's Redemption by Joseph J. Giraudo). Argument shall be heard before:

**HONORABLE MICHAEL R. McVEY
SUPERIOR COURT OF ARIZONA
NORTHEAST REGIONAL COURT CENTER
18380 NORTH 40TH STREET
COURTROOM 112
PHOENIX, ARIZONA 85032
(602) 506-3167**

LET THE RECORD REFLECT that the Intervenor and Third-Party Defendants have agreed on the record this date to produce the outstanding discovery requests propounded by Plaintiff on May 10, 2010, not later than June 25, 2010.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-050966

06/18/2010

3:00 p.m. Matter concludes.

LATER:

The Court has considered Plaintiff Helvetica Servicing Inc.'s Motion to Dismiss Plaintiff in Intervention Ronald Gold's Complaint in Intervention, Plaintiff in Intervention Ronald L. Gold's Response in Opposition to Helvetica Servicing's Motion to Dismiss the Complaint in Intervention, and Plaintiff Helvetica's Reply. The Court has also considered oral argument of counsel for the parties.

There are two reasons why Helvetica's Motion to Dismiss should be granted. First, on August 6, 2009, Michael Pasquan elected to exercise his right to a fair market valuation determination by the Court. At the time that he made that election, Kelly Pasquan and Michael Pasquan held title to the subject property as community property with right of survivorship. At no time thereafter did Kelly S. Pasquan object to a fair market value determination hearing. In fact, she joined her then-husband in his attempt to preclude Helvetica from obtaining a deficiency judgment.

More importantly, the right of redemption is an interest in real property and not a personal right, and transfer of that interest cannot occur without satisfying the requirements of A.R.S. § 33-401(b). The instrument that transferred the right to redemption to the subject property did not contain the signature of Michael Pasquan. Therefore Kelly Pasquan's assignment to Ronald Gold was null and void. Therefore,

IT IS ORDERED granting Plaintiff Helvetica Servicing Inc.'s Motion to Dismiss Plaintiff in Intervention Ronald Gold's Complaint in Intervention.

The Court has considered the Plaintiff in Intervention Ronald L. Gold's Motion to Dismiss Helvetica Servicing Inc.'s Counterclaim, the Response filed by Helvetica and the Reply filed by Gold. The Court has further considered oral argument of counsel for the parties.

IT IS ORDERED denying Ronald L. Gold's Motion to Dismiss Helvetica Servicing Inc.'s Counterclaim.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>